IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10573 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ISMAIL ALIAS LATHATHO IBRAHIMKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10573 of 2002

MR AR SHAIKH for Petitioner No. 1

MR MK PATEL, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/03/2003

ORAL JUDGEMENT

#. By filing this petition, the petitioner-detenu has challenged his detention order dated 31.7.2002. By the impugned order, the petitioner-detenu is detained in exercise of the powers under section 3(2) of the Gujarat Prevention of Antisocial Activities Act,1985 (hereinafter referred to as "the PASA" for short), as, the detaining authority found that the detenu is a "dangerous person"

and is required to be detained under the preventive detention, so that, he may not continue with such type of illegal activities.

#. Along with the detention order, the detenu was also served with the grounds of detention of the same date. In the said grounds, there is a reference of three criminal cases, which are pending against the petitioner under the various provisions of IPC. It is alleged against the petitioner that, he is a headstrong and communal minded person. The particulars of the activities of the petitioner are given in the detention order. The authority, after having been satisfied about the alleged activities of the petitioner, has detained him by way of preventive detention.

#. At the time of hearing of this petition, it is argued by the learned advocate for the petitioner that there is a nonapplication of mind on the part of the authority as according to her, some irrelevant documents have been taken into consideration at the time of passing the detention order. It is submitted that, even though, the petitioner is a accused in the criminal case wherein the FIR is registered as CR No.124 of 2002 against the petitioner at Navabpura Police Station, but, the papers given to the petitioner are in connection with the FIR registered as CR No.123 of 2002. In this behalf, reference is made to page 126 which is a panchnama in which there is a reference of CR No.123 of 2002. Similarly, even the document at page 165 which is given is in connection with CR No.123 of 2002 and same is the position in connection with the documents at pages 166, 167, 170, 171 and 173. As a matter of fact, the detaining authority has considered the documents of some other CR number, i.e. 123/2002, while the petitioner is accused in connection with CR No.124 of 2002, and accordingly irrelevant documents have been taken into account and most of the documents are of another CR which are given to the petitioner. In that view of the matter, it is clear that the authority has taken into consideration the extraneous documents which have no connection with the case of the petitioner and the petitioner is also accordingly given irrelevant documents which have no connection with the case of the present petitioner. Learned advocate for the petitioner has relied upon the decision in the case of Mehboob Khan Nawab Khan Pathan v. Police Commissioner, Ahmedabad and another, reported in AIR 1989 SC 1803, wherein in paras 6, 7 and 8, the Apex Court has observed as under.:

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6. Similarly in the grounds of detention, concerned in Writ Petition No.480/88, four cases are made mention of as having been considered for bringing the writ petitioner/detenu (Sharifkhan Nawabkhan Pathan) within the definition of Section 2(c). As in the other two cases, this writ petitioner/detenu is in no way connected with the cases shown under S1.Nos.5 and 6 in Annexure `D'. Admittedly S1. No.5 of Annexure `D' relates to a fruitless prohibition raid conducted in a place under the occupation Ayubkhan Nawabkhan in respect of which no case was registered. The case shown under S1.No.6 is a case registered only against Ayubkhan Nawabkhan Pathan under the Prohibition Act.

7. It is, thus, demonstrably shown that the detaining authority has not applied his mind properly confining his consideration only with reference to incidents mentioned in the grounds of detention, and has mechanically passed these orders taking into consideration various extraneous matters, namely the incidents other than those shown in the grounds of detention especially, incidents under S1.Nos.5 and 6 of Annexure `D' with which the detenus have no direct or indirect connection or participation. We, therefore, agree with the submission made by the learned counsel for the petitioners that these three detention orders suffer from the vices of nonapplication of mind and extraneous consideration. The counter argument advanced by the learned counsel for the respondents that the detaining authority has drawn his subjective satisfaction only on the materials mentioned in the grounds of detention and passed these detention orders by proper application of mind to those materials and as such the impugned orders are not vitiated cannot be accepted for the reasons mentioned above.

8. Lastly, it has been urged by the learned counsel for the petitioners that the petitioners have been deprived of making effective and purposeful representations as envisaged under Article 22(5) of the Constitution of India to the authorities concerned since the detaining authority for bringing them within the definition of Section 2(c) has taken into consideration certain extraneous matters with which the

petitioners have no connection whatsoever. This submission, in our view, cannot be easily brushed aside as having no force.

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#. In the instant case, it is not in dispute that most of the documents supplied to the petitioner are in connection with some other criminal case which have no connection with the impugned detention order, and, accordingly, relevant documents are not placed before the detaining authority nor the same have been given to the petitioner. On the aforesaid ground, the detention order suffers from nonapplication of mind and is required to be quashed and set aside.

#. In view of what is stated above, the petition is allowed. The order of detention dated 31.7.2002 is quashed and set aside. The detenu Ismail Alias Lathatho Ibrahimkhan Pathan is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly.

(P.B.Majmudar,J)
(pathan)